

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton;
Tony Hammond; and
Robert G. Taub

Market Dominant Product Prices
Inbound Market Dominant Multi-Service Agreements
with Foreign Postal Operators
China Post Group – United States Postal Service
Multi-Product Bilateral Agreement (MC2010-35)
Negotiated Service Agreement

Docket No. R2013-2

ORDER APPROVING AN ADDITIONAL INBOUND MARKET DOMINANT
MULTI-SERVICE AGREEMENT WITH FOREIGN POSTAL OPERATORS 1
NEGOTIATED SERVICE AGREEMENT
(WITH CHINA POST GROUP)

(Issued December 28, 2012)

I. INTRODUCTION

On November 15, 2012, the Postal Service filed notice, pursuant to 39 CFR 3010.40 *et seq.*, of a Type 2 rate adjustment concerning the inbound portion of a bilateral agreement with China Post Group (Agreement).¹ The Postal Service seeks to

¹ Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, November 15, 2012 (Notice). China Post Group is the postal operator for China. *Id.* at 4.

include the Agreement within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-35, R2010-5, and R2010-6) product. For the reasons discussed below, the Commission approves both requests.

II. BACKGROUND

Product history. The Commission approved the addition of the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product to the market dominant product list in Order No. 549, following consideration in Docket No. MC2010-35.² In companion dockets, the Commission concurrently approved the inclusion of two agreements within the new product.³ Since then, the Commission has added other agreements based on findings of functional equivalence.⁴

Instant docket. The Agreement is the successor to the China Post 2011 Agreement, which took effect on October 1, 2011.⁵ The Agreement covers inbound Letter Post small packets with delivery scanning.⁶ Notice at 4.

² Docket Nos. MC2010-35, R2010-5, and R2010-6, Order No. 549, Order Adding Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 to the Market Dominant Product List and Approving Included Agreements, September 30, 2010 (Order No. 549).

³ *Id.* The agreements included within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product at the time the Commission approved its addition to the market dominant product list are the Strategic Bilateral Agreement between United States Postal Service and Koninklijke TNT Post BV and TNT Post Pakketservice Benelux BV (TNT Agreement) and the China Post Group–United States Postal Service Letter Post Bilateral Agreement (China Post 2010 Agreement).

⁴ These include, among others, the Hongkong Post Agreement and the China Post Group 2011 Agreement. See Order No. 700, Docket No. R2011-4, Order Approving Rate Adjustment for Hongkong Post–United States Postal Service Letter Post Bilateral Agreement Negotiated Service Agreement, March 18, 2011, at 8, and Order No. 871, Docket No. R2011-7, Order Concerning an Additional Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, September 23, 2011.

⁵ Docket No. R2011-7, United States Postal Service Response to Order No. 871 Concerning Effective Dates of an Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement, September 30, 2011.

⁶ Letter Post small packets shipped under the Agreement must conform to the size and weight limitations specified in the Universal Postal Union Letter Post Manual or as bilaterally agreed. The weight limit is 2 kilograms (approximately 4.4 pounds). Agreement, Annex 2 at 12.

Effective date and duration. The Agreement is intended to take effect January 1, 2013. *Id.* at 3. It is scheduled to expire on December 31, 2013, unless terminated sooner. *Id.* Attachment 2 at 7 (Article 23).

The instant docket. The Postal Service's filing includes the Notice, supporting documentation, and an Application for Non-Public Treatment of material filed under seal. The Notice incorporates requests for approval of exceptions to the data collection requirements in rule 3010.43 and the service performance reporting requirements in rule 3055.3(a)(3). Notice at 7.

In Order No. 1550, the Commission provided public notice of the Postal Service's filing, established a docket for consideration of the filing's consistency with applicable statutory policies and Commission regulations, appointed a Public Representative, and provided interested persons with an opportunity to comment.⁷

III. THE POSTAL SERVICE'S POSITION

Functional equivalency. The Postal Service refers to three of the previously-approved agreements within the Inbound Market Dominant Agreements with Foreign Postal Operators 1 product, and asserts that the instant Agreement is functionally equivalent to them because its terms fit within the product's proposed Mail Classification Schedule (MCS) language.⁸ *Id.* at 8-9. The Postal Service therefore asserts that the instant Agreement and the previously-approved agreements conform to a common description. *Id.*

The Postal Service further asserts that all four agreements are constructed from a similar template and contain many similar terms and conditions. *Id.* at 9. It observes that that all four agreements provide rates for Letter Post tendered to the Postal Service from each foreign postal operator's territory, along with ancillary services to accompany

⁷ Notice and Order Concerning Type 2 Rate Adjustment and China Post 2013 Negotiated Service Agreement, November 20, 2012 (Order No. 1550).

⁸ The referenced agreements are the China Post 2010 Agreement, the TNT Agreement, and the China Post 2011 Agreement (referred to here as the previously-approved agreements).

inbound Letter Post, and that each contract is with a foreign postal operator. *Id.* The Postal Service further asserts that the benefits of all the agreements are comparable because they incorporate the same attributes and methodology and the relevant characteristics of the contracts are similar, if not the same. *Id.* It also contends that the Agreement is functionally equivalent to the previously-approved agreements, and should be added to the market dominant product list within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product. *Id.*

The Postal Service, using the China Post 2010 Agreement as the basis of comparison, identifies differences in contractual terms. These include, *inter alia*, revisions, deletions, and additions. *Id.* at 9-12. However, the Postal Service asserts that the differences between the Agreement and the China Post 2010 Agreement do not affect either the fundamental service being offered or the fundamental structure of the contracts. *Id.* at 11.

Statutory criteria. Under 39 U.S.C. § 3622(c)(10), the Commission assesses whether the agreement (1) improves the net financial position of the Postal Service or enhances the performance of operational functions; (2) will not cause unreasonable harm to the marketplace; and (3) will be available on public and reasonable terms to similarly situated mailers.

The Postal Service observes, with respect to the first criterion, that the Agreement results in an improvement over default rates established under the Universal Postal Union (UPU) Acts for inbound Letter Post items. Notice at 1. With respect to the second criterion, the Postal Service refers to China Post Group's dominant market position for Letter Post originating in China; certain prohibitions in the Private Express Statutes governing domestic carriage of inbound international letters after entry at a U.S. port; the absence of any private entity that would be able to serve the U.S. market for inbound Letter Post from China on the terms and scale contemplated in the Agreement; and the contracting parties' status as the designated operators for the exchange of mail under the UPU. *Id.* at 5-6. The Postal Service therefore states that the Agreement is unlikely to pose competitive harm to the marketplace because there is

no significant competition in the relevant market when the inbound Letter Post flows are considered in totality. *Id.* at 6. The Postal Service considers the third criterion inapplicable, given its assessment that there are no entities similarly situated to China Post in terms of their ability to tender Letter Post flows from China under similar operational conditions, nor any other entities that serve as a designated operator for Letter Post originating in China. *Id.* at 8.

Requests for reporting exceptions. In lieu of the special data collection plan required under 39 CFR 3010.43, the Postal Service proposes to report information on the Agreement through the Annual Compliance Report (ACR) and cooperate with the Commission to provide any necessary information about mail flows from China. *Id.* at 7. The Postal Service asks that the Agreement be excepted from separate reporting under 39 CFR 3055.3(a)(3), noting similar exceptions for agreements previously included within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product.⁹ *Id.*

IV. COMMENTS

The Public Representative filed comments pursuant to Order No. 1550.¹⁰ No other comments were received.

Functional equivalence. The Public Representative reviews the differences between the agreements. *Id.* at 4. He observes that Annex 6, which establishes business rules governing the timing and exchange of documents and other information related to settlement payments for delivery confirmation service for inbound Letter Post small packets, is the most significant. *Id.*

The Public Representative concludes that differences, including the addition of Annex 6, do not affect the similarity of the cost characteristics. *Id.* He, therefore,

⁹ See *Id.* for the specific agreements to which the Postal Service refers and *Id.* n.8 for citations to related Commission orders.

¹⁰ Public Representative Comments on Postal Service Notice Concerning Type 2 Rate Adjustment and China Post 2013 Bilateral Negotiated Service Agreement, November 29, 2012 (PR Comments).

considers the Agreement to be functionally equivalent to the China Post 2010 Agreement, TNT Agreement, and Hongkong Post 2011 Agreement. *Id.*

Statutory criteria. The Public Representative concludes that the negotiated rates in the Agreement will improve the net financial position of the Postal Service, and that it is therefore consistent with 39 U.S.C. § 3622(c)(10). *Id.* at 3. This conclusion is based on his finding that the Agreement's negotiated rates generate additional contribution (i.e., smaller negative contribution) for the Postal Service than the otherwise applicable UPU rates for calendar year 2013. *Id.*

IV. COMMISSION ANALYSIS

The Commission has reviewed the Notice, the Agreement, the financial analyses provided under seal, and comments filed by the Public Representative.

Statutory criteria. Under 39 U.S.C. § 3622(c)(10), the Commission assesses whether the Agreement (1) improves the net financial position of the Postal Service or enhances the performance of operational functions; (2) will not cause unreasonable harm to the marketplace; and (3) will be available on reasonable terms to similarly situated mailers.

The Commission finds, with respect to the first criterion, that the negotiated rates in the Agreement will improve the net financial position of the Postal Service, as they will generate higher revenues, contribution, and cost coverage than otherwise applicable UPU default rates. The Commission finds, with respect to the second criterion, that the Agreement will not cause unreasonable harm to the marketplace, given the impact of the contracting parties' status as designated operators in the market. The Commission finds the third criterion inapplicable.

Functional equivalence. The Commission concludes that the Agreement is functionally equivalent to the China Post 2010 Agreement, TNT Agreement, and HongKong Post 2011 Agreement, and should be included within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product. Differences between the Agreement and previously-approved similar agreements do not

foreclose a finding that the agreements are functionally equivalent. The Commission therefore concludes that the Agreement may be included in the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product.

Reporting exceptions. The Postal Service proposes that no special data collection plan be created for the Agreement, essentially seeking a waiver of section 3010.43's data collection reporting requirements. Notice at 7. Instead, it intends to report information under the Agreement through the ACR and agrees to provide information about mail flows from China Post within the course of the ACR review process. *Id.* Given the limited nature of this negotiated service agreement with a foreign postal operator, the Commission grants the waiver of section 3010.43.

The Commission also approves the Postal Service's request for an exception from separate service performance reporting under 39 CFR 3055(a)(3). The Commission has granted exceptions of this type for other negotiated service agreements with other foreign postal operators on grounds that substantially all of their components are part of a grouping of products already being measured.

Follow up submissions. The Postal Service shall promptly notify the Commission if the effective date of the Agreement differs from the intended effective date. The Postal Service shall also promptly notify the Commission if the Agreement terminates earlier than intended. In addition, within 30 days of the Agreement's expiration date, or early termination, the Postal Service shall file costs, volumes, and revenues associated with the Agreement.

The Agreement with China Post includes both market dominant and competitive rates and services. The instant proceeding concerns market dominant rates. The competitive rates counterpart was reviewed by the Commission in Docket No. CP2013-23.¹¹ In the latter, the Commission ordered that the Agreement be included in the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product

¹¹ Docket No. CP2013-23, Notice of United States Postal Service of Filing Functionally Equivalent Inbound Competitive Multi-Service Agreement with a Foreign Postal Operator, November 30, 2012.

on the competitive products list.¹² In addition, Order No. 1591 directed the Postal Service to file by January 20, 2013, a further explanation of why Annex 6 to the Agreement should remain under seal or, alternatively, to file an unredacted version of Annex 6's Business Rules. *Id.* at 8. Since the Postal Service's application for non-public treatment was filed in both dockets, it shall also file its response to Order No. 1591 in this docket, distinguishing, if necessary, the need for non-public treatment for market dominant services at issue here.

Conclusion. The Commission finds that the Agreement satisfies relevant statutory criteria and approves its inclusion within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product.

V. ORDERING PARAGRAPHS

It is ordered:

1. The Commission approves the Type 2 rate adjustment requested in this docket.
2. The Agreement filed in Docket No. R2013-2 is included within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-35) product.
3. The Postal Service shall notify the Commission if the effective date of the Agreement differs from the intended effective date.
4. The Postal Service shall promptly notify the Commission if the Agreement terminates early.

¹² Docket No. CP2013-23, Order Approving an Additional Inbound Competitive Multi-Service Agreements with Foreign Operators 1 Negotiated Service Agreement (with China Post Group), December 21, 2012, (Order No. 1591).

5. Within 30 days of expiration, or early termination, of the Agreement, the Postal Service shall file costs, volumes, and revenues associated with the Agreement.
6. The Commission grants the Postal Service's request for an exception to the requirement in 39 CFR 3010.43 that it prepare a separate data collection plan for this Agreement, subject to alternative reporting in the Annual Compliance Report and cooperation in filing pertinent information with the Commission.
7. The Commission grants the Postal Service's request for an exception from the separate service reporting requirements in 39 CFR 3055(a)(3), subject to the inclusion of pertinent information on the terms stated in this Order.
8. Within 30 days of the issuance of this Order, the Postal Service shall file a further explanation of the need to maintain the Business Rules in Annex 6 of the Agreement under seal or a replacement for Annex 6 in accordance with the terms of the Order.

By the Commission.

Shoshana M. Grove
Secretary